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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,856	06/05/2001	Alic Anthony Scott	8579	5088

27752 7590 12/27/2002

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/874,856	SCOTT ET AL.
	Examiner	Art Unit
	Gina C. Yu	1617

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 October 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4 and 6-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4 and 6-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Receipt is acknowledged of Amendment filed on October 3, 2002. Claims 1– 4 and 6-25 are pending. Claim rejections under 35 U.S.C. § 112 as indicated in the Office action dated April 3, 2002 are withdrawn in view of applicants' remarks. Claim rejections under §§ 102 and 103 are withdrawn in view of the claim amendment, and new rejections are made.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-4 and 6-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomey et al. (US 5614200) ("Bartholomey") in view of Snyder et al. (US 5389363) ("Snyder").

Bartholomey teaches mascara compositions comprising lecithin (Phospholipon 80), which meets the limitations of instant claim 1(a) and 2-4; and ammonia acrylate copolymer (Syntran 5170) which meets the limitations of instant claims 1(c) and 6-8. See Examples; see also the disclosure of fractionated lecithins in col. 5, lines 31-48. Adding film-forming agents such as PVP and PVP/VA copolymers is suggested in col. 5, line 49 – 6. See instant claim 1(b). The example formulas in Bartholomey also teaches to use waxes, glyceryl monostearate, water/ethanol solvents, black iron oxide, triglyceride, and preservatives. See instant claims 9 and 12-25. The weight ratio of glycerol monostearate to lecithin as required by instant claims 10-11 are disclosed in col. 5, lines 11 – 30.

Bartholomey fails teach the specific type of PVP copolymers in instant claim 1(b). Snyder teaches a waterproof mascara formulations comprising 1.5 % of PVP/tricontanyl copolymer. See Examples 1 and 2. See also col. 4, line 55 – col. 5, line 8.

Given the general teaching of using film-forming agents such as PVP copolymers in mascara formulation in Bartholomey, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to the prior art such as Snyder for specific types of the film-forming copolymers conventionally used in the art. Alternatively, the skilled artisan would have been motivated to modify the Bartholomey invention by adding PVP tricontanyl copolymer as suggested by Snyder because of the expectation of successfully producing waterproof mascara.

Response to Arguments

Applicant's arguments with respect to claims 1-4 and 6-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

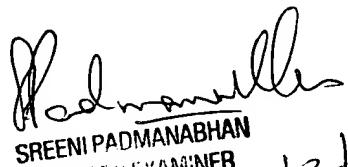
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
December 20, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER
12/26/02